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CHARLES ELMORE

NO. 356

In the Supreme Court of the United States

OCTOBER TERM, 1929

ROBERT H. LUCAS, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

PILLIOD LUMBER COMPANY, RESPONDENT

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S MOTION TO ADVANCE

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes the Respondent, Pilliod Lumber Company, by its counsel, and prays that this cause may be advanced and assigned for hearing immediately after the argument of No. 118, *Florsheim Brothers Dry Goods Company, Inc.*, v. *The United States*, and No. 414, *White* v. *Hood Rubber Company*.

By order of December 9, 1929, No. 414 was as-

signed for argument with No. 118 as one case, on Monday, January 13, 1930, after the case theretofore assigned for that day.

For the reasons herein stated respondent does not move that this case be set down with No. 118 and No. 414 for argument as one case.

STATEMENT OF THE MATTER INVOLVED

This case presents two questions of law.

First Question: Whether the return filed by the taxpayer, respondent, in March, 1919, for the year 1918, on the form prescribed by the Commissioner of Internal Revenue, known as "Form 1031T" (the so-called "Tentative Return") set running the five year period of limitation for the assessment of income tax prescribed by the Revenue Acts of 1918, 1921 and 1924.

Second Question: Whether the return subsequently filed by the taxpayer, respondent, (in May, 1919) on the other form prescribed by the Commissioner, known as "Form 1120" (the so-called "Complete Return") was inoperative to set running the said period of limitation, because, when filed by the respondent, it was not verified; the verification having been subsequently, within said period, supplied, and the return having been treated and acted on by the Commissioner and the respondent in like manner as if the same had been verified when filed.

The determination of a deficiency was made October 25, 1925, (R.8) more than six years after the filing of each return. No waiver or consent enlarging the time is involved.

Each question was raised in the respondent's appeal to the Board of Tax Appeals (R.3-5). The facts

were fully found by the Board with respect to each return (R. 7-8). The facts with regard to the return on Form 1031T (as well as with regard to the return on Form 1120) are stated in the opinion of the Circuit Court of Appeals (R. 12-13).

The Board decided both questions in favor of the Government (R. 9-10). Both questions were raised in the Circuit Court of Appeals by the assignment of errors (pars. I and II, R. 11).

The Circuit Court of Appeals did not pass on the first question but decided the second question in favor of the respondent (R. 12-15).

REASONS SUPPORTING THE MOTION

The second question is peculiar to the instant case.

The first question is presented in No. 414 and is raised by the petition for the writ of certiorari in No. 118 and No. 414.

If No. 118 and No. 414 are argued on the merits as one case, and the instant case is not advanced and heard separately, there will not be an opportunity for counsel for respondent in the instant case to present an argument for the consideration of the Court until this case is reached on the regular call of the docket (in March, 1930). (Rule 28, paragraph 3.)

A similar point of law is presented with respect to both questions, namely, whether a return filed in good faith is ineffective to start running the period of limitation because of an irregularity or omission; as expressed by the Circuit Court of Appeals whether such a return can be ignored as "non-existent" (R. 15).

It is believed that it would be of assistance to the Court to have the second question as well as the

first question presented on oral argument immediately after the argument in No. 414 of the principal question there presented which, as stated, is substantially the first question.

Respondent's counsel in the instant case, represents other taxpayers whose claims in large amounts are pending in the lower courts and in the Department. In each of these claims the question is involved as to whether the return on Form 1031T or the return on Form 1120 set running the 5 year period for collection of the tax.

Should the Court think that an unreasonable amount of time is requested, it is respectfully suggested that the argument for respondent might be sufficiently presented in half an hour.

The Court having taken a recess on December 11th, there has not been an earlier opportunity to bring this matter to the attention of the Court after the granting of the motion to advance in No. 414.

December 20, 1929.

HENRY M. WARD,
Counsel for Petitioner.